

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----	X	
	:	
CARL W. HEFTON (individually, and on	:	
behalf of DOUG TURNER, TROY FIELDS,	:	
RICHARD BLACKMON, BOB CARTER,	:	Index No. 112971/2007
DALE KESLER, RICHARD CAPERTON,	:	
DAN CONWAY and ELLIOTT S. OSHRY),	:	NOTICE OF FILING OF
and BEN G. GILL (individually, and on behalf	:	NOTICE OF REMOVAL
of BRIAR TREE, LTD),	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	
	:	
VISCERN HOLDING CORPORATION,	:	
	:	
Defendant.	:	
	:	
-----	X	

PLEASE TAKE NOTICE that, on October 26, 2007, Defendant Viscern Holding Corporation ("Viscern") filed a Notice of Removal, a copy of which is attached, removing this action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

PLEASE TAKE FURTHER NOTICE that Viscern, in addition to filing such Notice of Removal in the office of the Clerk of the United States District Court for the Southern

NEW YORK
COUNTY CLERK'S OFFICE

OCT 26 2007

NOT COMPARED
WITH COPY FILE

District of New York, also caused a copy of that Notice of Removal to be filed with the Clerk of the Supreme Court, County of New York, to effect removal pursuant to 28 U.S.C. § 1446(d).

Dated: October 26, 2007

Respectfully submitted,

NIXON PEABODY LLP

By: Christopher M. Mason
Christopher M. Mason
437 Madison Avenue
New York, New York 10022
(212) 940-3000

Attorneys for Defendant

TO: Steven D. Karlin
PLATZER, SWERGOLD, KARLIN, LEVINE,
GOLDBERG & JASLOW, LLP
1065 Avenue of the Americas, 18th Floor
New York, New York 10018
(212) 593-3000

Attorneys for Plaintiffs

JUDGE PAITERMAN
CIVIL COVER SHEET

07 CIV 9586

JS 44C/SDNY
REV. 1/97
WEB 12/02

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

CARL W. HEFTON et al.

DEFENDANTS

VISCERN HOLDING CORPORATION.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Steven D. Karlin
Platzer, Swergold, Karlin, Levine Goldberg & Jaslow, LLP
1065 Avenue of the Americans, 18th Floor
New York, New York 10018

ATTORNEYS (IF KNOWN)

Nixon Peabody LLP
437 Madison Avenue
New York, New York 10022
(212) 940-3000

OCT 26 2007

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Plaintiffs Hefton and Gill seek specific performance and judgment declaring that as between plaintiffs and defendant, defendant had, and has, no claim to the Escrow.

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [X] IN ONE BOX ONLY)

NATURE OF SUIT

CONTRACT		TORTS		FORFEITURE/PENALTY		ACTIONS UNDER STATUTES		OTHER STATUTES			
		PERSONAL INJURY	PERSONAL INJURY			BANKRUPTCY					
<input type="checkbox"/> 110	INSURANCE	<input type="checkbox"/> 310	AIRPLANE	<input type="checkbox"/> 362	PERSONAL INJURY -	<input type="checkbox"/> 610	AGRICULTURE	<input type="checkbox"/> 422	APPEAL	<input type="checkbox"/> 400	STATE
<input type="checkbox"/> 120	MARINE	<input type="checkbox"/> 315	AIRPLANE	<input type="checkbox"/> 365	MED MALPRACTICE	<input type="checkbox"/> 620	FOOD & DRUG	<input type="checkbox"/> 28 USC 158		<input type="checkbox"/> 470	REAPPORTIONMENT
<input type="checkbox"/> 130	MILLER ACT		PRODUCT	<input type="checkbox"/> 368	PERSONAL INJURY	<input type="checkbox"/> 625	DRUG RELATED	<input type="checkbox"/> 423	WITHDRAWAL	<input type="checkbox"/> 410	ANTITRUST
<input type="checkbox"/> 140	NEGOTIABLE		LIABILITY		PRODUCT LIABILITY		SEIZURE OF	<input type="checkbox"/> 28 USC 157		<input type="checkbox"/> 430	BANKS & BANKING
<input type="checkbox"/> 150	INSTRUMENT	<input type="checkbox"/> 320	ASSAULT, LIBEL &		ASBESTOS PERSONAL		PROPERTY			<input type="checkbox"/> 450	COMMERCE/ICC
	RECOVERY OF		SLANDER		INJURY PRODUCT	<input type="checkbox"/> 21 USC 881			PROPERTY RIGHTS		RATES/ETC
	OVERPAYMENT &	<input type="checkbox"/> 330	FEDERAL		LIABILITY	<input type="checkbox"/> 630	LIQUOR LAWS			<input type="checkbox"/> 460	DEPORTATION
	ENFORCEMENT		EMPLOYERS'			<input type="checkbox"/> 640	RR & TRUCK	<input type="checkbox"/> 820	COPYRIGHTS	<input type="checkbox"/> 470	RACKETEER INFLU-
	OF JUDGMENT		LIABILITY		PERSONAL PROPERTY	<input type="checkbox"/> 650	AIRLINE REGS	<input type="checkbox"/> 830	PATENT		ENCED & CORRUPT
<input type="checkbox"/> 151	MEDICARE ACT	<input type="checkbox"/> 340	MARINE	<input type="checkbox"/> 370	OTHER FRAUD	<input type="checkbox"/> 660	OCCUPATIONAL	<input type="checkbox"/> 840	TRADEMARK		ORGANIZATION ACT
<input type="checkbox"/> 152	RECOVERY OF	<input type="checkbox"/> 345	MARINE PRODUCT	<input type="checkbox"/> 371	TRUTH IN LENDING	<input type="checkbox"/> 690	SAFETY/HEALTH		SOCIAL SECURITY	<input type="checkbox"/> 810	SELECTIVE SERVICE
	DEFAULTED		LIABILITY	<input type="checkbox"/> 380	OTHER PERSONAL		LABOR	<input type="checkbox"/> 861	MIA (1395FF)	<input type="checkbox"/> 850	SECURITIES/
	STUDENT	<input type="checkbox"/> 350	MOTOR VEHICLE	<input type="checkbox"/> 385	PROPERTY DAMAGE			<input type="checkbox"/> 862	BLACK LUNG (923)		COMMODITIES/
	LOANS (EXCL	<input type="checkbox"/> 355	MOTOR VEHICLE		PROPERTY DAMAGE	<input type="checkbox"/> 710	FAIR LABOR	<input type="checkbox"/> 863	DIWC (405(g))	<input type="checkbox"/> 875	CUSTOMER
<input type="checkbox"/> 153	VETERANS)	<input type="checkbox"/> 360	PRODUCT LIABILITY		PRODUCT LIABILITY	<input type="checkbox"/> 720	STANDARDS ACT	<input type="checkbox"/> 863	DIWW (405(g))		CHALLENGE
	RECOVERY OF		OTHER PERSONAL			<input type="checkbox"/> 730	LABOR/MGMT	<input type="checkbox"/> 864	SSID TITLE XVI	<input type="checkbox"/> 891	12 USC 3410
	OVERPAYMENT		INJURY				RELATIONS	<input type="checkbox"/> 865	RSI (405(g))	<input type="checkbox"/> 892	AGRICULTURE ACTS
	OF VETERANS					<input type="checkbox"/> 740	REPORTING &		FEDERAL TAX SUITS	<input type="checkbox"/> 893	ECONOMIC
<input type="checkbox"/> 160	BENEFITS						DISCLOSURE ACT	<input type="checkbox"/> 870	TAXES	<input type="checkbox"/> 894	STABILIZATION ACT
<input type="checkbox"/> 190	STOCKHOLDERS					<input type="checkbox"/> 790	RAILWAY LABOR	<input type="checkbox"/> 871	IRS-THIRD	<input type="checkbox"/> 895	ENVIRONMENTAL
	SUITS						ACT		PARTY 20 USC 7609		MATTERS
<input type="checkbox"/> 195	OTHER					<input type="checkbox"/> 791	OTHER LABOR			<input type="checkbox"/> 899	ENERGY
	CONTRACT						LITIGATION			<input type="checkbox"/> 900	ALLOCATION ACT
	CONTRACT						EMPL RET INC			<input type="checkbox"/> 905	FREEDOM OF
	PRODUCT						SECURITY ACT			<input type="checkbox"/> 909	INFORMATION ACT
	LIABILITY									<input type="checkbox"/> 950	APPEAL OF FEE
										<input type="checkbox"/> 990	DETERMINATION
											UNDER EQUAL
											ACCESS
											TO JUSTICE
											CONSTITUTIONALITY
											OF STATE STATUTES
											OTHER STATUTORY
											ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE: NO.

DEMAND \$ _____ OTHER _____

JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

JURY DEMAND: ☐ YES ☒ NO

(PLACE AN X IN ONE BOX ONLY)

☐ 1 Original Processing ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

ORIGIN

(PLACE AN X IN ONE BOX ONLY)

☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☒ 4 DIVERSITY IF DIVERSITY, INDICATE CITIZENSHIP BELOW (28 USC 1322, 1441)

BASIS OF JURISDICTION

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [] ¹	DEF [] ¹	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF [] ³	DEF [] ³	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF [] ⁵	DEF [X] ⁵
						Incorporated -- Delaware		
CITIZEN OF ANOTHER STATE	[X] ²	[] ²	INCORPORATED or PRINCIPAL PLACE	[] ⁴	[]	Principal place -- Connecticut	[] ⁶	[] ⁶
Texas						FOREIGN NATION		

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES) (Calendar Rule 4(A))

Plaintiff Hefton -- 6031 Club Oaks Drive, Dallas, Texas 75248, Dallas County
Plaintiff Gill -- 5208 Briar Tree, Dallas, Texas 75248, Dallas County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES) (Calendar Rule 4(A))

3 Greenwich Office Park, Greenwich, Connecticut 06831, Fairfield County

Check One: THIS ACTION SHOULD BE ASSIGNED TO:

☐ WHITE PLAINS☒ FOLEY SQUARE

(DO NOT check either box if this is a PRISONER PETITION.)

DATE 10/26/07 SIGNATURE OF ATTORNEY OF RECORD

Christopher M. Mason

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

[x] YES (DATE ADMITTED Mo. _10_ Yr. _1985_)

Attorney Bar Code # 7146

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE PATTERSON

CIV 9586

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL W. HEFTON (individually, and on
behalf of DOUG TURNER, TROY FIELDS,
RICHARD BLACKMON, BOB CARTER,
DALE KESLER, RICHARD CAPERTON,
DAN CONWAY and ELLIOTT S. OSHRY),
and BEN G. GILL (individually, and on behalf
of BRIAR TREE, LTD),

Plaintiffs,

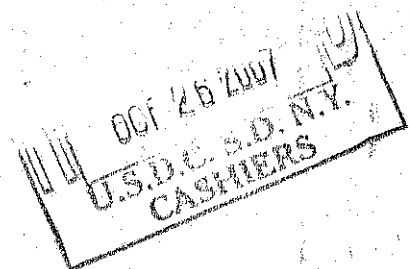
- against -

VISCERN HOLDING CORPORATION,

Defendant.

Index No.

NOTICE OF REMOVAL



PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446,
Defendant Viscern Holding Corporation ("Viscern") removes this action to the United States
District Court for the Southern District of New York. The following grounds exist for removal:

1. On or about September 24, 2007, Plaintiffs Carl W. Hefton and Ben G. Gill filed a Complaint in *Hefton v. Viscern Holding Corporation*, Index No. 112971/07 (the "State Court Action") in the Supreme Court of the State of New York, County of New York.
2. On September 27, 2007, Plaintiffs' counsel mailed a copy of the Summons and Complaint in the State Court Action to counsel for Viscern.
3. On October 2, 2007, counsel for Viscern received the copy of the Summons and Complaint mailed by Plaintiffs' counsel.
4. On October 15, 2007, Viscern was served with a copy of a Summons and the Complaint in the State Court Action. Pursuant to 28 U.S.C. § 1446(a), a copy of the

Summons and Complaint received by Viscern is attached as Exhibit A. These constitute all the process, pleadings, and orders served on Viscern in this action.

5. Viscern is filing this Notice of Removal within thirty days after receiving notice of the State Court Action. Viscern's removal is therefore timely pursuant to 28 U.S.C. § 1446(b).

6. Diversity jurisdiction exists in this Court over this action pursuant to 28 U.S.C. § 1332.

7. Plaintiff Carl W. Hefton alleges in the Complaint that he is an individual domiciled and residing in Dallas, Texas. Complaint ¶ 1. Therefore, Mr. Hefton is a citizen of the State of Texas for purposes of removal.

8. Plaintiff Ben G. Gill alleges in the complaint that he is an individual domiciled and residing in Dallas, Texas. Complaint ¶ 2. Therefore, Mr. Gill is a citizen of the State of Texas for purposes of removal.

9. Plaintiffs allege that Viscern is a Delaware corporation with its principal place of business in Greenwich, Connecticut. *See* Complaint ¶ 3. Therefore, Viscern is a citizen of the States of Delaware and Connecticut for purposes of removal. (Viscarn is in the process of moving its headquarters to Rye, New York. This will not affect its entitlement to remove this action.)

10. The amount in controversy in this action exceeds \$75,000, exclusive of interest and costs.

11. Among other things, Plaintiffs seek a declaration in the Complaint that "the amounts claimed in Viscern Holdings' Notice of Claim are not valid, can not be documented and do not represent claims which Viscern Holding may properly assert against the

Escrow.” Complaint ¶ 21. Plaintiffs further allege that “[b]ut for Viscern Holding having served the Notice of Claim, the Escrow is properly payable, and would have been paid, to the plaintiffs under the terms of the Escrow Agreement.” Complaint ¶ 23.

12. The amount allegedly at issue in the Escrow is \$533,450. Complaint ¶ 19.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because the State Court Action is pending in the Supreme Court of the State of New York, County of New York.

14. Written notice of the filing of this Notice of Removal will promptly be given to Plaintiffs and, together with a copy of this Notice of Removal, will be filed with the Clerk for the Supreme Court, New York County, as provided by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant Viscern respectfully removes the State Court Action currently pending in the Supreme Court of the State of New York, County of New York, to this Court and respectfully requests that this matter proceed in this Court as an action properly removed thereto.

Dated: October 26, 2007

NIXON PEABODY LLP

By: Christopher M. Mason
Christopher M. Mason (CM 7146)
437 Madison Avenue
New York, New York 10022
(212) 940-3000

Attorneys for Defendant

TO: Steven D. Karlin
PLATZER, SWERGOLD, KARLIN, LEVINE,
GOLDBERG & JASLOW, LLP
1065 Avenue of the Americas, 18th Floor
New York, New York 10018
(212) 593-3000

Attorneys for Plaintiffs

Exhibit “A”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
CARL W. HEFTON (individually, and on behalf of
DOUG TURNER, TROY FIELDS,
RICHARD BLACKMON, BOB CARTER, DALE
KESLER, RICHARD CAPERTON, DAN CONWAY
AND ELLIOTT S. OSHRY), and BEN G. GILL
(individually, and on behalf of BRIARTREE, LTD)
Plaintiffs,

-against-

VISCERN HOLDING CORPORATION,

Defendant.

112971-01
Index No.:

SUMMONS

Plaintiffs' Address:

Carl Hefton
6031 Club Oaks Drive
Dallas, Texas 75248

Ben G. Gill

5208 Briar Tree
Dallas, Texas 75248

Basis of Venue:

Written Agreement of the Parties
----- x

To The Above Named Plaintiff:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons to serve a notice of appearance on the Plaintiffs' Attorney(s), within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
September 24, 2007

PLATZER, SWERGOLD, KARLIN, LEVINE,
GOLDBERG & JASLOW, LLP
Attorneys for Plaintiffs

By: Steven D. Karlin

Steven D. Karlin
1065 Avenue of the Americas
New York, New York 10018
(212) 593-3000

Defendant's Address:

Viscero Holding Corporation
c/o Flinn Investments, L.P.
Three Greenwich Office Park, 2nd Floor
Greenwich CT 06831

Plaintiffs' Address:

Carl Hefton
6031 Club Oaks Drive
Dallas, Texas 75248

Ben G. Gill
5208 Briar Tree
Dallas, Texas 75248

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
CARL W. HEFTON (individually, and on behalf of :
DOUG TURNER, TROY FIELDS, :
RICHARD BLACKMON, BOB CARTER, DALE :
KESLER, RICHARD CAPERTON, DAN CONWAY :
AND ELLIOTT S. OSHRY), :
and BEN G. GILL (individually, and on behalf of BRIAR :
TREE, LTD) :

Index No.: _____

Plaintiffs, :

-against- :

COMPLAINT

VISCERN HOLDING CORPORATION, :

Defendant. :

----- x
Plaintiffs, by their attorneys, Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP,
as and for their complaint against the defendant allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Carl W. Hefton ("Mr. Hefton") is, and at all times hereinafter was, an individual domiciled and residing in Dallas, Texas.

2. Plaintiff Ben G. Gill ("Mr. Gill", and together with Mr. Hefton, the "plaintiffs") is, and at all times hereinafter mentioned was, an individual domiciled and residing in Dallas, Texas.

3. Upon information and belief, defendant Viscern Holding Corporation ("Viscern Holding") is, and at all times hereinafter mentioned was, a corporation organized and existing pursuant to the laws of the state of Delaware with its principal place of business in Greenwich, Connecticut.

4. Pursuant to a certain Stockholders' Agreement dated December 30, 2005 (the

"Stockholders' Agreement"), Viscern Holding and Mr. Hefton consented to exclusive jurisdiction in, *inter alia*, the courts of the state of New York.

5. Pursuant to a certain Escrow Agreement dated December 30, 2005 (the "Escrow Agreement"), Viscern Holding and the plaintiffs consented to exclusive jurisdiction in, *inter alia*, the courts of the state of New York.

BACKGROUND ALLEGATIONS

6. On or about December 30, 2005 Viscern Holding purchased (the "Purchase") and the plaintiffs caused to be conveyed to Viscern Holding all of the outstanding capital stock of an entity called Viscern, Inc., and in connection therewith and as, among other things, consideration therefor, Viscern Holding and Mr. Hefton among others, executed the Stockholders' Agreement.

7. As part of the Purchase, Mr. Hefton received, and remains the holder of, 174,562 shares of common stock (the "Shares") of Viscern Holding.

8. The "Pro Rata Amount" of the Shares held by Mr. Hefton, as defined in the Stockholders' Agreement does not constitute less than five (5) percent of the common stock held by all stockholders of Viscern Holding.

9. In connection with the purchase, Viscern Holding and the plaintiffs executed the Escrow Agreement.

10. There is currently a balance of not less than \$533,450 (the "Escrow") in the possession and control of an escrow agent (the "Agent") created under the terms of the Escrow Agreement.

AS AND FOR A FIRST CAUSE OF ACTION
BY MR. HEFTON INDIVIDUALLY FOR SPECIFIC PERFORMANCE

11. The Stockholders' Agreement provides, *inter alia*, that unless Mr. Hefton holds less than five (5) percent of the common stock held by all stockholders of Viscern Holding, Mr. Hefton shall be entitled to serve as a director of Viscern Holding on its board of directors (the "Board").

12. Viscern Holding has violated, and continues to violate, the Stockholders' Agreement by, among other things, (i) having removed Mr. Hefton from the Board; (ii) having prevented Mr. Hefton from attending Board meetings; (iii) having failed to provide Mr. Hefton with notice of Board meetings; (iv) having failed, and continuing to fail, to provide Mr. Hefton with documents used, circulated and/or discussed at Board meetings; (v) having failed, and continuing to fail to take any and all necessary actions to restore Mr. Hefton to his rightful position as a Board member.

13. As a direct and proximate result of the aforedescribed actions and inactions of Viscern Holding, Mr. Hefton is unable to protect his ownership interest in Viscern Holding as expressly negotiated in, and provided for, in the Stockholders' Agreement.

14. As a direct and proximate result of the aforedescribed actions and inactions of Viscern Holding, Mr. Hefton has incurred, and continues to incur potential liability to stockholders and others for his inability to discharge his fiduciary duties as a board member of Viscern Holding.

15. As a direct and proximate result of the aforedescribed actions and inactions of Viscern Holding, the value of Mr. Hefton's investment in, and ownership of, Viscern Holding is, and continues to be, adversely affected in an amount which cannot yet be determined.

16. All conditions precedent, if any, to Mr. Hefton's right to Board membership have been performed or have occurred.

17. Mr. Hefton has no adequate remedy at law.

**AS AND FOR A SECOND CAUSE OF ACTION BY MR. HEFTON, INDIVIDUALLY
AND AS "SELLER'S REPRESENTATIVE"(AS DEFINED IN THE ESCROW
AGREEMENT), AND BY MR. GILL, INDIVIDUALLY AND AS "GILL SELLERS'
REPRESENTATIVE" (AS DEFINED IN THE ESCROW AGREEMENT)**

18. On or about December 30, 2005 and in connection with the Purchase, the Escrow Agreement was executed, and the Escrow continues to be held by the Agent in accordance with the terms of the Escrow Agreement.

19. On or about June 7, 2007, pursuant to a notice of claim dated June 7, 2007 Viscern Holding asserted a claim (the "Notice of Claim") to the Escrow in the amount of \$533,450.

20. On or about June 25, 2007, plaintiffs served an Objection Notice to Claim with respect to the Notice of Claim and in accordance with the terms of the Escrow Agreement.

21. Upon information and belief, the amounts claimed in Viscern Holdings' Notice of Claim are not valid, can not be documented and do not represent claims which Viscern Holding may properly assert against the Escrow.

22. Viscern Holding has refused, and continues to refuse, to provide evidentiary or other documentary support for the amount asserted in its Notice of Claim.

23. But for Viscern Holding having served the Notice of Claim, the Escrow is properly payable, and would have been paid, to the plaintiffs under the terms of the Escrow Agreement.

24. The Notice of claim has resulted in the agent's refusal to turn over the Escrow to the plaintiffs.

25. There is a concrete, justiciable controversy between Viscern Holding and the plaintiffs.

26. Plaintiffs have no adequate remedy at law.

WHEREFORE,

(I) Mr. Hefton prays for judgment on the First Cause of Action in the amount of any money damages established at trial or otherwise, plus appropriate interest, and requiring Viscern Holding to specifically perform the Stockholders' Agreement, including without limitation:

(i) judgment directing Viscern Holding to immediately restore, or immediately take such steps as may be necessary to restore Mr. Hefton or his designee to the Board;

(ii) judgment directing Viscern Holding to immediately produce to Mr. Hefton or his designee, a list of all current and past board members from and after December 30, 2005 to the date of judgment;

(iii) judgment directing Viscern Holding to immediately to produce to Mr. Hefton or his designee, copies of all notices of board meetings from and after December 30, 2005 to the date of judgment;

(iv) judgment directing Viscern Holding to immediately produce to Mr. Hefton or his designee copies of all minutes of board meetings from December 30, 2005 to the date of judgment;

(v) judgment directing Viscern Holding to immediately produce to Mr. Hefton or his designee copies of all documents produced to, and for, members of the Board from and after December 30, 2005 to the date of judgment; and

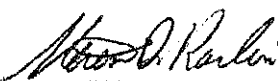
(vi) costs and disbursements of this action;

AND,

(II) the plaintiffs pray for judgment on the Second Cause of Action, declaring that as between the plaintiffs and Viscern Holding, Viscern Holding had, and has, no claim to the Escrow, together with the costs and disbursements of this action.

Dated: New York, New York
September 24, 2007

PLATZER, SWERGOLD, KARLIN, LEVINE,
GOLDBERG & JASLOW, LLP
Attorneys for plaintiffs

By: 
Steven D. Karlin
1065 Avenue of the Americas - 18th Floor
New York, New York 10018
(212) 593-3000
skarlin@platzerlaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 CIV 0586

CARL W. HEFTON (individually, and on
behalf of DOUG TURNER, TROY FIELDS,
RICHARD BLACKMON, BOB CARTER,
DALE KESLER, RICHARD CAPERTON,
DAN CONWAY and ELLIOTT S. OSHRY),
and BEN G. GILL (individually, and on behalf
of BRIAR TREE, LTD),

Plaintiffs,

- against -

VISCERN HOLDING CORPORATION,

Defendant.

07 Civ. [number]

RULE 7.1 DISCLOSURE
STATEMENT

OCT 26 2007

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, and to enable Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, defendant Viscern Holding Corporation, a non-governmental corporate party, by its undersigned counsel Nixon Peabody LLP, states that it is not publicly traded. Viscern, Inc. is a wholly-owned subsidiary of Viscern Holding Corporation. Viscern Holding Corporation also has the following corporate affiliates: Resources Services, Inc., Ketchum Incorporated, Resource Services Capital Corporation RSI Financial Services, Inc., Spruce Lodge 293/295, L.L.C. and RSI Fund Raising (Canada) Ltd.

Dated: October 26, 2007

NIXON PEABODY LLP

By: Christopher M. Mason
Christopher M. Mason (CM 7146)
437 Madison Avenue
New York, New York 10022
(212) 940-3000

Attorneys for Plaintiff-Appellant

TO: Steven D. Karlin
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GOLDBERG & JASLOW, LLP
1065 Avenue of the Americas
18th Floor
New York, New York 10018
(212) 593-3000

Attorneys for Defendant-Respondent